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Before the

Supreme Court of the United States

Wilbur C. King, Jerry W. Carter, Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission,
Appellants

v.

United States of America and Interstate Commerce Commission,
Appellees.

No. 9

October Term 195[illegible]

MOTION
FOR LEAVE TO FILE A BRIEF, AMICUS CURIAE

on behalf of
Shippers and Two Railroads in support of Appellants.

F. C. HILLYER, Attorney
227 W. Forsyth St.
Jacksonville 2, Fla.

April 25, 1952.

THE MILLER PRESS JACKSONVILLE, FLA.

Before the

Supreme Court of the United States

King v. United States
No. 444, October Term 1951

Motion for Leave to File a Brief Amicus Curiae

Many Florida shippers and receivers of intrastate freight, and Two Railroads hereinafter described, and hereinafter referred to for brevity as the Shippers, present this motion seeking permission of the Court to file a brief amicus curiae in the above entitled proceeding, and respectfully represent to this Court that:

I.C.C. No. 30140

A number of non-profit civic freight traffic associations, such as and including the Florida Rate Conference, Broward County Traffic Association, Greater Miami Traffic Association, Jacksonville Traffic Bureau, Traffic Bureau of the Chamber of Commerce of St. Petersburg, Florida, Tampa Traffic Association, and groups of shippers, such as and including the Florida Lumber and Mill Work Association, Inc., Jacksonville Warehousemen's Association, and receivers of Forest products, Fertilizer, Sugar Cane, etc., and two respondent Railroads, were active interveners in support of the Florida Railroad and Public

Utilities Commission in the proceeding before the Interstate Commerce Commission, entitled **"Increases in Florida Intrastate Rates,"** 278 I.C.C. 41, I.C.C. Docket No. 30140.

The Two Railroads were the Live Oak, Perry & Gulf Railroad Company and the South Georgia Railway Company.

The Shippers, on whose behalf this motion is filed, are among those described in the Interstate Commerce Commission's report as "many protesting shippers" (278 I.C.C. 61) and "various shippers and their organizations" (278 I.C.C. 66).

The order of the Interstate Commerce Commission in that proceeding, No 30140, required that the railroads increase their intrastate rates, notwithstanding the orders of the Florida Railroad and Public Utilities Commission. The effect of that order has placed the burden of additional transportation charges upon the Shippers of Florida.

Fed. Dis. Ct. No. 292

The Florida Railroad and Public Utilities Commission petitioned a Three-Judge District Court for the Northern district of Florida, Tallahassee Division, seeking permanently to enjoin, set aside and annul the Order of the Interstate Commerce Commission in No. 30140, which required that the railroads increase their Florida intrastate rates (Case No. 292-E-Civil).

The Shippers and the Two Railroads intervened in No. 292 on behalf of the Florida Commission.

The opinion of District Judge Devane, for the Three-Judge Court, in paragraph 1, refers to the intervention in that proceeding of the Shippers as parties plaintiff. (See opinion dated June 29, 1951.)

S. Ct. No. 444

The Florida Railroad and Public Utilities Commissioners appealed from the decision of the Three-Judge District Court.

On January 2, 1952, the Supreme Court noted probable jurisdiction. 72 S. Ct. 296.

The Shippers are informed and believe that the case will not be reached before the October term of 1952.

Consent of the Parties

In compliance with Rule 27, paragraph 9 of the rules of the Supreme Court of the United States, the Shippers sought the written consent of all parties to the case to the filing of a brief, amicus curiae.

The Honorable Philip B. Perlman, Solicitor General, by letter of January 23, 1952, consented for appellees.

Allen Crenshaw, Esq., Assistant Chief Counsel of the Interstate Commerce Commission, by letter of January 25, 1952, agreed.

By letter of January 25, 1952, Honorable Lewis W. Petteway, General Counsel, Florida Railroad and Public Utilities Commission, representing the appellants, consented.

Frank W. Gwathmey, Esq. attorney for Atlantic Coast Line Ry. Co., et al. (not including the L. O. P. & G. and the So. Ga. Ry.) by letter of February 26, 1952, expressed his unwillingness, on the grounds that: the shippers did not join in the appeal; that the law will be adequately presented by the Florida Commission; and that the filing of such a brief would impose an added and unnecessary burden upon the Court as well as upon the Appellees.

By letter of March 8, 1952, the Shippers were advised by the Clerk of the Supreme Court that they would be required to file a printed motion for leave to file such a brief.

POINT I

The Shippers ask that the Supreme Court rule that the railroads, represented by Mr. Gwathmey, not being defendants in No. 292, the case before the Three-Judge District Court below, and not being named as appellees in the No. 444 on appeal, are not "parties to the case" within the provision of rule 27, paragraph 9; and that the consent of the railroads was not necessary to the filing of a brief, amicus curiae, by the Shippers and the Two Railroads.

POINT II

The interest of the Florida Commission, Appellant in this proceeding, bears primarily upon the question of adjective law, viz., whether jurisdiction over these Florida intrastate rates was lawfully exercised by the Interstate Commerce Commission or the Florida Railroad and Public Utilities Commission.

The Shippers have confidence in the ability of the

Florida Commission to present and support the five assignments of error in this appeal. However, the Shippers' interests bear primarily upon a question of substantive law, viz.; the quantum of the charges which they must pay and bear, in addition to their interest in preserving the jurisdiction of the Florida Commission over Florida intrastate rates.

The Shippers and the Two Railroads desire to supplement the brief to be filed on behalf of the Florida Commission with a Brief presenting additional facts of record and arguments upon the assignments of error, from the viewpoint of the shipping public and the Two Railroads.

Wherefore, the Shippers and the Two Railroads, intervening plaintiffs in the Three-Judge Case below, ask permission to file a brief amicus curiae.

Respectfully submitted,

F. C. HILLYER, Attorney for Shippers, and Two Railroads:

Florida Rate Conference
Broward County Traffic Association
Greater Miami Traffic Association
Jacksonville Traffic Bureau
The Traffic Bureau of the Chamber of Commerce of St. Petersburg, Florida

Tampa Traffic Association

Florida Lumber and Mill Work Association

Jacksonville Warehousemen's Association

Truman Fertilizer Company

Wilson & Toomer Fertilizer Company

U. S. Sugar Corporation.

Live Oak, Perry & Gulf Railroad Company

South Georgia Railway Company

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing printed motion for leave to file a brief, amicus curiae, on behalf of the Shippers, in **King v. United States** No. 444, October Term, 1951, by mailing, by first class mail, a copy thereof properly addressed to each of the appellants and appellees and to Mr. Frank W. Gwathmey attorney for Atlantic Coast Line Railroad Company, et al.

Dated at Jacksonville, Fla., this ..... day of April, 1952.

F. C. Hillyer